

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Second Periodic Review of the)	MM Docket No. 03-15
Commission's Rules and Policies)	
Affecting the Conversion)	RM 9832
to Digital Television)	

**REPLY COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION**

Michael Petricone, Esq.
Vice President, Technology Policy
CONSUMER ELECTRONICS ASSOCIATION
2500 Wilson Boulevard
Arlington, VA 22201
(703) 907-7544

David R. Siddall, Esq.
Neil Fried, Esq.
PAUL, HASTINGS, JANOFSKY & WALKER
1299 Pennsylvania Avenue, N.W., 10th Flr.
Washington, DC 20004
(202) 508-9519

*Counsel to the Consumer Electronics
Association*

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EXECUTIVE SUMMARY

CEA demonstrated in its comments that by any measure, the wide variety of DTV products in the marketplace heralds a successful roll-out of digital television. The adoption rate has been more rapid than that of PCs, VCRs, CD players, and color TVs.

Other market segments, including DVD, cable, and satellite have capitalized on facilitating the consumer transition to digital programs and products while broadcasters have been slow to construct digital stations and facilities capable of reaching all of the viewers in their analog service area. The Commission's most recent figures show that only 25 percent of all commercial broadcast stations are on the air with signals that cover the viewers in their analog stations' service areas. In addition, many of the digital stations broadcast only part-time, and few aggressively promote their digital channel.

Allowing broadcasters to continue to grossly underutilize their allotted spectrum with vacant channels, part-time operations, and inadequate, under-powered transmitters prevents the broadcast DTV transition from progressing as envisioned. In this proceeding the Commission should make the following decisions:

- Require permanent channel selections to be submitted in time to be approved by no later than May 1, 2005. This is absolutely necessary to permit other stations to obtain approval, plan, and build their permanent digital facilities; and for Class A, low power, translator and repeater stations to relocate within core channels 2-51.
- Allow broadcasters to switch their analog and digital channels upon application, provided that existing technical criteria are observed to prevent interference. The lengthy rulemaking delays currently encountered are unnecessary and contribute to the overall delay in the roll-out of digital broadcasting.
- Require full signal replication and maximization by July 1, 2004 for commercial stations and July 1, 2005, for non-commercial stations by removing interference protection from unused spectrum after those dates. These dates provide a more than two year extension from the original dates of May 1, 2002, and May 1, 2003, for full service-area replication.
- Affirm the current schedule for minimum digital broadcast hours so that part-time digital operations end by April, 2005.

- Adopt the entire PSIP standard (A/65B), the latest ATSC standard(A/53B) and industry digital v-chip standards EIA/CEA-766-A and EIA-708-B. The record reflects overwhelming support for adoption of these standards.
- Approve the proposed cable plug-and-play agreement expeditiously. Approximately 70 percent of TV households view broadcast programming over a cable system. Mass consumer adoption of DTV, therefore, requires simple, nationwide plug-and-play interoperability between DTV products and digital cable systems.

This proceeding presents the Commission with an opportunity to resolve a number of issues critical to concluding the digital transition. The Commission's decision on each issue should emphasize full coverage and broadcasting for the entire day for all digital stations. Speeding the digital broadcast transition to its conclusion must predominate the Commission's decision-making process. With access to valuable spectrum at issue, the Commission must reject calls for delay.

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The Consumer Electronics Association ("CEA") respectfully submits these reply comments to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹ In this proceeding the Commission seeks comment on the progress of the analog-to-digital television transition and on selected regulatory issues that it must resolve before broadcasters can finish the transition.

I. Introduction

By any measure, the wide variety of DTV products in the marketplace heralds a successful roll-out of digital television as CEA demonstrated in its Comments.² The DVD, cable and satellite program segments of the industry have capitalized on facilitating the consumer transition to digital programs and products while the broadcasters' transition has been slowed by their reluctance to construct stations and facilities that replicate the signal coverage of their analog signals and to promote the benefits of their digital stations. Commission figures show

¹ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion*, MB Docket No. 03-15, *Notice of Proposed Rulemaking*, 18 FCC Rcd 1279 (2003) ("NPRM").

² Comments of the Consumer Electronics Association at 3-6, App. B (filed April 21, 2003) ("CEA Comments").

that only 25 percent of commercial broadcast stations are on air with signals that cover their analog service areas. In addition, many digital stations broadcast only part time.

This proceeding presents the Commission with an opportunity to resolve a number of issues critical to concluding the digital transition. The Commission's decision on each issue should emphasize full coverage and broadcasting for the entire day for all digital stations. Until these goals are met, the steadily increasing number of consumers with digital televisions will have to continue to rely primarily on cable, satellite, and DVDs for their viewing and the spectrum capacity reserved for these broadcasts will continue to go unused.

II. Lack of Promotion and Insufficient Signal Coverage Hinder Consumer Demand for Broadcast DTV

Despite the availability and steadily increasing sales of DTV products, the lack of digital, high-definition broadcast programming continues to hinder the transition to digital broadcasting. As CEA noted in its Comments, barely one-half of commercial broadcast stations were on the air as of March, notwithstanding rules requiring them to have begun digital broadcasting by May 1, 2002.³ Many of these digital stations are broadcasting only part time, and more than half are transmitting with substantially less power than the Commission has authorized.⁴ As a result, the stations are transmitting inadequate signals that prevent consumers from receiving digital programming within significant portions of the stations' analog service areas. The lack of promotion for DTV programming, both over the air and in the print media (such as TV listings) also dampens overall consumer demand. Moreover, the lack of FCC-approved cable plug-and-play standards, as well as the dearth of cable retransmissions of broadcast DTV programs, excludes the 70 percent of television viewers who rely on cable for broadcast signal reception.

³ *CEA Comments* at 7.

⁴ *CEA Comments* at 7-8.

All of this undermines efforts to reach the statutory 85 percent of television households necessary to complete the transition.

After CEA filed its Comments, the FCC updated the DTV broadcast figures that it releases to the public on its website.⁵ As of April 16, 2003—almost one year after the May 1, 2002, construction deadline for commercial DTV broadcast stations—only 25.6 percent of the FCC-allotted commercial DTV stations have been constructed with full facilities and placed on air; 36.9 percent have not yet been placed on the air at all; and 37.5 percent are on the air but with facilities that fail to replicate the stations’ analog service area consistent with their allotments.⁶

A number of commenters reviewed the facts and reached the same conclusions as CEA. The Consumers Federation of America (“CFA”) notes the paucity of commercial broadcasters that have brought full-power digital signals on the air. CFA observes that operating at low power means that some percentage of homes within a station’s analog service area cannot receive the station’s digital signal.⁷

The National Cable & Telecommunications Association (“NCTA”) and the American Cable Association (“ACA”) similarly point out that in many cases the broadcasters’ reduced-power DTV signals do not reach cable system headends or are poor quality signals below the level necessary for retransmission.⁸ NCTA also notes that many digital broadcast stations are on

⁵ See <http://www.fcc.gov/mb/video/dtvstatus.html>.

⁶ The DTV Table of Allotments, as amended, is codified at 47 C.F.R. § 73.622 (2002).

⁷ Comments of the Consumer Federation of America at 3 (filed April 21, 2003)(“*CFA Comments*”).

⁸ Comments of National Cable & Telecommunications Association at 7-9 (filed April 21, 2003)(“*NCTA Comments*”); Comments of the American Cable Association at 7-9 (filed April 21, 2003).

the air only for “a handful of hours a day.”⁹ Such short hours makes using a cable channel for a broadcaster’s digital signal inefficient and perhaps confusing to consumers, who expect a consistent channel line-up and all-day programming.

The result, as CFA concludes, is that “while broadcasters impose more costs on consumers through tuner mandates and mandatory receiver performance standards, they fail to live up to their obligations to get a full power signal on the air.”¹⁰ CFA urges the Commission to stop allowing broadcasters to stall in performing their responsibilities.¹¹

The broadcasters generally argue that despite having been granted valuable rights to use an additional 6 MHz channel during the transition, they cannot afford to operate both analog and digital facilities at full power.¹² They ask the FCC to continue its minimum DTV-facilities policy (city-of-license coverage) to allow them the flexibility to “grow into their digital facilities” and to minimize their economic burden.

Two broadcasters—Cordillera Communications, Inc. (“Cordillera”) and Belo Corp. (“Belo”)—claim that their reduced-power DTV signals reach the majority of viewers in their markets. Cordillera cites KPAX-DT in Missoula, Montana, which it says at reduced power serves 90 percent of the population covered by the digital facilities authorized by the

⁹ *NCTA Comments* at 7-8.

¹⁰ *CFA Comments* at 3.

¹¹ *Id.* at 3-4.

¹² Comments of Cordillera Communications, Inc. at 5 (filed April 21, 2003)(“*Cordillera Comments*”); Block Communications Inc. at 6 (filed April 21, 2003)(“*Block Comments*”); Hubbard Broadcasting, Inc. at 3 (filed April 21, 2003)(“*Hubbard Comments*”); Joint Comments of Association of Maximum Service Television, Inc. and the National Association of Broadcasters at 11 (filed April 21, 2003)(“*MSTV and NAB Comments*”); Comments of Belo Corp. at 9 (filed April 21, 2003)(“*Belo Comments*”); Joint Comments of Alaska Broadcasters Association, Arkansas Broadcasters Association and Thomas Broadcasting Company at 4 (filed April 21, 2003)(“*Alaska Broadcasters Assoc., et al. Comments*”); and Joint Comments of National Broadcasting Company, Inc. and Telemundo Group, Inc. at 10 (filed April 21, 2003)(“*NBC and Telemundo Comments*”).

Commission.¹³ Similarly, Belo states that KENS-TV in San Antonio, Texas, reaches approximately 81 percent of the population within its authorized DTV service area notwithstanding its reduced-power operation.¹⁴

Unfortunately, the examples of reduced power offered by Cordillera and Belo are not representative of the truly low powers and facilities many DTV broadcast stations are using. We submitted in our Comments an example of how low power fails to serve many communities and a significant number of viewers within an existing analog service area.¹⁵ Cordillera and Belo each use as an example a station that radiates in excess of 25 kW effective radiated power (“ERP”). Review of the Commission’s May 12, 2003, list of Digital STAs granted on or after November 16, 2002,¹⁶ demonstrates that the majority of stations operating with less than full facilities are using powers substantially below those of these two stations. Indeed, several stations claiming compliance with the Commission’s community-of-license coverage rule report using less total radiated power than that of an ordinary 100-watt light bulb. Approximately 100 of the stations are operating at 5 kW or less.

In 1997, after years of argument by broadcasters that each existing station must have a second channel for a transition period to duplicate the area served by its analog signal, the Commission assigned every station an extra 6 MHz channel on a temporary basis sufficient to do so. Congress passed an enabling statute authorizing such non-competitive assignments.¹⁷ The purpose of the Congressional and Commission actions was to permit each broadcast station to

¹³ *Cordillera Comments* at 6, Attachment A.

¹⁴ *Belo Comments* at 9-10.

¹⁵ *See CEA Comments* at App. A.

¹⁶ Media Bureau Digital Temporary Authority Actions, Public Notice, Report No. PN03-1 (rel. May 12, 2003).

¹⁷ *See* 47 U.S.C. § 336 (a), (c).

build and operate a digital station that would replicate the analog station's service area and broadcast in conjunction with its analog station for a limited transition period.¹⁸

The Commission adopted requirements for construction of the digital stations in April, 1997—six full years ago.¹⁹ Broadcasters therefore have enjoyed more than ample time to plan, construct, and place on air their digital stations. Yet after these six years only 25 percent of commercial television broadcasters have on-air facilities capable of reaching their analog viewers.

Allowing broadcasters to so grossly underutilize the allotted spectrum with part-time operations and inadequate, under-powered transmitters prevents the broadcast DTV transition from progressing as envisioned. Congress statutorily provided for the FCC to assign each existing broadcaster an extra channel for what was supposed to be a limited transition period, during which viewers are to have access to both the analog and digital signal of each station. Leaving many of the assigned digital channels completely vacant and broadcasting at minimal power and for limited portions of the day on many of the other channels leaves a significant amount of valuable spectrum available (“white space”) that could, and should, be put to productive use on an interim basis by others.²⁰

III. Delaying Broadcasters' Permanent Channel Selections Delays the DTV Transition

The Commission must require all stations to have Commission approvals “in hand” by the Commission's proposed channel-election deadline of May 1, 2005, if out-of-core stations are

¹⁸ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Sixth Report and Order*, 12 FCC Rcd 14588 (1997), *recon.*, 14 FCC Rcd 1348 (1998).

¹⁹ See *id.*

to be able to select their digital channel, have it approved by the Commission, and build their DTV facilities by the end of 2006. Meeting this realistic deadline would require that stations submit their elections to the FCC by March 1, 2005, with the exception of stations within 200 miles of the Canadian or Mexican borders. Such stations would have to submit their applications by December 1, 2004, because of the need for international coordination.

CEA urged in its comments that the Commission adopt these dates, with application-processing guidelines to ensure that each station will have its grant by the May 1, 2005, target date. To speed the process, CEA also recommended allowing stations to swap their analog and digital channels without requiring a full-blown rulemaking proceeding. Such swaps would be subject to adjustment of each station's technical requirements to comply with the desired-to-undesired (D/U) ratios the Commission has already adopted to prevent interference for all the combinations of analog and digital signals.²¹

Even the schedule we proposed is tight. It allows just 19 months before the December 31, 2006, statutory target, after which analog stations may continue to broadcast only with a Commission-issued extension based upon DTV penetration in the station's particular market.²² The statute makes no distinction among analog broadcast stations with two out-of-core channels, one out-of-core channel, or two in-core channels.

Several broadcasters with out-of-core DTV channels urge the Commission to establish an earlier, firm channel-election deadline for broadcasters with two in-core channels. They argue that doing so is necessary to allow the broadcasters with out-of-core channels time to construct

²⁰ See, e.g., Comments and Reply Comments of the Consumer Electronics Association, ET Docket No. 02-380, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band (filed April 17, 2003, and May 16, 2003, respectively).

²¹ See 47 C.F.R. §§ 73.622, 73.623 (2002).

²² See 47 C.F.R. § 309(j)(14).

their in-core facilities before the statutory deadline or replication and maximization requirements take effect.²³ The Association of Maximum Service Television, Inc. and the National Association of Broadcasters (“MSTV and NAB”) state that they do not oppose outright the FCC’s proposed May 1, 2005, channel-election deadline, but request the Commission to defer adopting specific channel-election procedures until broadcasters have “the opportunity to develop them and present them to the Commission.”²⁴ They claim that if the channel-election process is not carefully coordinated it “could lead to excessive interference, resulting in sub-optimal DTV service.”²⁵

MSTV and NAB also argue that dispensing with rulemakings for channel swaps would increase the likelihood of interference. Other broadcasters join MSTV and NAB in claiming that the FCC, in cooperation with the broadcast industry, should establish detailed channel-election and repacking procedures that will “assure successful broadcaster migration to digital while preserving the quality of service to viewers.”²⁶

The suggestions of MSTV and NAB and other broadcasters would create significant, new delay. Such additional delay is totally unwarranted. Six full years have passed since the FCC adopted its out-of-core and in-core strategy. The FCC designed this strategy so that it could provide all analog broadcast licensees a digital channel capable of providing service equivalent to analog, while at the same time assign as many digital channels as possible within the “core”

²³ See, e.g., Comments of Davis Television Wausau, LLC, at 4 (filed April 21, 2003); Comments of WLNY-TV Inc. at 4 (filed April 21, 2003) (“*WLNY-TV Comments*”); and Comments of Eastern Television Corporation at 1-3 (filed April 21, 2003).

²⁴ *MSTV and NAB Comments* at 6, 25.

²⁵ *Id.* at 5.

²⁶ See, e.g., *Belo Comments* at 8-9; Comments of Cox Broadcasting, Inc. at 2-4 (filed April 21, 2003) (“*Cox Comments*”); Comments of Capitol Broadcasting Company, Inc. at 11 (filed April 21, 2003) (“*Capitol Comments*”); *Hubbard Comments* at 2-4; *Alaska Broadcasters Assoc., et al. Comments* at 3-4; *Cordillera Comments* at 2-5.

spectrum of channels 2-51, which will remain digital broadcast spectrum after the transition. It strains credulity to believe that broadcasters now will formulate a “plan” that has not been possible to formulate during the past six years. With billions of dollars worth of spectrum only partially and sporadically utilized, time is of the essence. Equivocation threatens to further delay the transition, and delay means spectrum capacity will continue to be wasted.

The open-ended request of MSTV and NAB for additional delay until industry can develop channel-election procedures is totally unpersuasive. There is no difficult engineering issue, as the final in-core digital channels are for use after analog channels have shut down. As the Commission found in 1998, and so informed the Congress, there will be no shortage of clear, in-core channels for digital use—even in highly-populated areas—once broadcasters cease analog operation. The Commission can even be generous in applying its existing D/U ratios to stations moving into the core spectrum to ensure that no interference will result. The Commission must use its existing criteria and set final deadlines now.

IV. The FCC Should Establish a 2004/2005 Deadline for Analog Service-Area Replication by Broadcast DTV Stations

The Commission should set July 1, 2004, as the deadline for both replication and maximization by network affiliates in the top 100 markets; and July 1, 2005, as the deadline for all other commercial and non-commercial broadcasters. These dates, proposed by CEA in its comments, are generous.

In the *First Periodic Review*, the Commission substantially relaxed broadcasters’ DTV coverage obligations. It eliminated the original requirement that DTV stations cover their full service-areas at the deadline for construction—on or before May 1, 2002, for commercial stations and May 1, 2003, for non-commercial stations. Delaying those obligations beyond 2004/2005 would deprive consumers access to the multiple sources of over-the-air programming

that are needed to invigorate this transition. Further delay clearly would be inappropriate and frustrate the intent of Congress to accomplish the DTV transition as soon as possible.

Public-safety organizations, winning bidders in the 700 MHz auction, and related equipment suppliers share this view. They urge the FCC to do everything possible to speed up the transition so that broadcasters will release their analog channels and the new 700 MHz licensees—including public safety organizations—can begin full operations. Many commenters, like CEA, propose that the Commission establish more aggressive replication and maximization deadlines than those suggested in the NPRM.²⁷ Generally, these commenters highlight that the longer the replication and maximization deadlines are delayed, the longer that large amounts of spectrum remain unused—spectrum that public-safety agencies desperately need and on which other users, some of whom already have licenses issued after an auction, are waiting to deploy advanced services.

MSTV and NAB and other broadcasters continue to try to push as far off as possible the construction of broadcasters' full-power DTV facilities, including to after 2006. They seek replication and maximization deadlines that coincide with the end of the transition, which would be December 31, 2006, or later if extended by the Commission pursuant to the statutory 85-

²⁷ See, e.g., Comments of the Association of Public-Safety Communications Officials-International, Inc., 03-15, at 2-5 (filed April 21, 2003); Comments of the Public Safety Wireless Network at 6-7 (filed April 21, 2003); Comments of the New York Office of Technology at 3, 7 (filed April 21, 2003); Comments of Motorola at 6 (filed April 21, 2003); Comments of the Crown Castle USA, Inc., at 3-4 (filed April 14, 2003); Joint Comments of KanOkla Telephone Association, Inc., Peoples Telephone Cooperative, Inc. and Artic Slope Telephone Association Cooperative at 3-4 (filed April 15, 2003); Comments of Access Spectrum, LLC, at 7-11 (filed April 21, 2003); Comments of Cavalier Group, LLC, at 23-24 (filed April 14, 2003); Comments of Datacom Wireless, LLC, at 5-8 (filed April 21, 2003); Comments of Flarion Technologies, Inc. at 3-4 (filed April 21, 2003); Comments of Harbor Wireless, LLC, at 5 (filed April 21, 2003).

percent penetration test.²⁸ MSTV and NAB assert that channel selection and the final DTV repacking process will be complex, and offer to work with broadcasters to propose procedures and policies to the FCC in a “timely fashion” that will assure “both an equitable election process and a spectrum-optimizing repacking process.”²⁹ They also argue that an end-of-transition deadline will not delay the transition because the vast majority of the major network-affiliated broadcasters in the largest markets have constructed stations and are operating with full DTV facilities.³⁰ MSTV and NAB also argue that their proposed delay “will mitigate stranded investment in maximized facilities,” and that an earlier deadline would be particularly inequitable for stations that have to change DTV channels at the end of the transition—especially stations with out-of-core DTV channels that have no option but to build out for the transition on one channel and then change their DTV channel post-transition.³¹ They also argue that a deadline before the end of the transition will disproportionately harm broadcasters in smaller markets.³²

In contrast, Cox Broadcasting, Inc., states that the Commission “has proposed reasonable replication/maximization deadlines that will increase the number of persons receiving over-the-

²⁸ *MSTV and NAB Comments* at ii, 8-13; *Belo Comments* at 7, 9-10; *Alaska Broadcasters Assoc., et al. Comments* at 5-6; Joint Comments of The Association of Public Television Stations, The Corporation for Public Television and the Public Broadcasting Service at 25-28 (filed April 21, 2003)(“*Public Television Comments*”); Comments of the Sinclair Broadcast Group, Inc. at iii, 9-11 (filed April 21, 2003)(“*Sinclair Comments*”); *Cordillera Comments* at 1, 5-8; *Capitol Comments* at 12; *WLNY-TV Comments* at 4-6; *Block Comments* at 6-9; *Hubbard Comments* at 4; *NBC and Telemundo Comments* at 10; Comments of Cohen, and Dippell and Everist, P.C. at 1-4 (filed April 21, 2003).

²⁹ *MSTV and NAB Comments* at ii, 5-6, 9.

³⁰ *Id.* at 8-9.

³¹ *Id.* at 9.

³² *MSTV and NAB Comments* at 11; *Belo Comments* at 9; *Alaska Broadcasters Assoc., et al. Comments* at 4.

air broadcast service.”³³ LPTV and Class A broadcasters also indicate support for the Commission’s proposed July 1, 2005, and July 1, 2006, replication and maximization deadlines, which also would allow them to plan final moves.³⁴

WLNY-TV, Inc., a broadcaster in the New York market with out-of-core analog and digital channels, notes that there are only 17 stations with both analog and digital “out-of-core” channels, and that therefore would have to build out their digital station after the transition. They also note that the DTV table contains about 165 out-of-core channel allotments. Thus, the migration scenario applies to less than 10 percent of the 1,688 DTV channels.³⁵

Delaying the date when digital television licensees are required to serve their entire authorized service area or lose their exclusive rights would seriously delay the broadcasters’ DTV transition. Broadcasters already have had six years to make any proposals they wish, and have failed to do so. Meanwhile, broadcasters with out-of-core channels, Class A and low-power licensees, as well as translator and repeater licensees all must wait to select their in-core channels until primary broadcasters have made their selections. The broadcasters’ request is a transparent attempt to delay the transition well past Congress’ 2006 deadline.

Significant spectrum resources have been left fallow since 1985, during a time of severe spectrum shortage for other services. Broadcasters must use the spectrum now to serve viewers or, through reasonable 2004 commercial deadlines and 2005 non-commercial deadlines, release the spectrum for additional broadcast or other uses.³⁶

³³ *Cox Comments* at 5.

³⁴ Comments of the Community Broadcasters Association at 1-3 (filed April 21, 2003); Comments of WatchTV, Inc. at 2 (filed April 21, 2003).

³⁵ *WLNY-TV Comments* at 2-3.

³⁶ Sinclair Broadcast Group, Inc. (“Sinclair”) claims that the Commission “should be focusing on the performance of over-the-air receivers, not mandating that broadcasters increase transmitter power and coverage area.” *Sinclair Comments* at 10. Sinclair would be better served

The Commission should not adopt an “intermediate coverage” deadline for greater than city-of-license coverage but less than full replication or maximization. Establishing yet another half-way “intermediate” measure, which itself could be subject to reconsideration and appeals, would only engender more uncertainty and delay. Capitol Broadcasting Company, Inc., agrees, stating that it “does not believe an intermediate signal for in-core or out-of-core channels is practical or economic.”³⁷ MSTV and NAB and Belo state that they do not oppose an intermediate requirement “if it is coupled with a use-it-or-lose it deadline at the close of the transition.”³⁸ MSTV and NAB also suggest that the FCC could “adopt a contour-based requirement, such as providing a reliable digital signal over the station’s City Grade or Grade A contour, or require stations to operate at a certain percentage of their full authorized power.”³⁹ In addition, MSTV and NAB suggest that the FCC “may want to consider varying the requirement based on market size.”⁴⁰

Public and other broadcasters either oppose an intermediate deadline or argue that any requirement to increase stations’ DTV signal strength should be tied to DTV-set penetration

to re-evaluate its low-power transmitters. Transmission of an adequate signal is necessary before it can be received, as CEA pointed out in its comments, and as Sinclair’s Vice President argued in an article published in *Broadcasting and Cable* in May, 2002. Nat Ostroff, Sinclair Broadcast Group, *Another DTV Threat: Cutting Power Could Kill the Service Before it Gets Started*, BROADCASTING AND CABLE ONLINE (May 6, 2002), at http://www.broadcastingcable.com/index.asp?layout=print_page&articleID=CA215831. Sinclair’s assertions that receivers are the source of impaired reception, rather than the grossly under-powered facilities that many broadcasters are using, defies engineering basics and fails to withstand even cursory consideration.

³⁷ *Capitol Comments* at 12.

³⁸ *MSTV and NAB Comments* at 13-14; *Belo Comments* at 10.

³⁹ *MSTV and NAB Comments* at 14.

⁴⁰ *Id.*

levels.⁴¹ Hubbard Broadcasting, Inc., suggests that any increase in coverage requirements be “tied to having 50% or more of viewers in community of license receiving digital television” signals either over-the-air or from an MVPD because doing so sooner “imposes additional costs with no resultant increased revenues.”⁴²

An intermediate service-area deadline could be turned into another delaying tactic too easily. From 1997 to 2001, commercial stations had 2002 as a deadline to replicate their analog service area with their digital signal. In 2001, the Commission changed course and allowed stations to cover just the community of license. The result is clear. Notwithstanding claims to the contrary, even basic engineering demonstrates that under-powered signals cannot reach all the viewers in the analog service area. This is true when only the community of license is covered, and will remain true for any intermediate service requirement. Only full coverage provides the necessary signal for all viewers to receive digital programming using their over-the-air equipment.

V. Broadcasters Must Meet Minimum Digital Broadcast Hours

CEA in its Comments stated that stations should simulcast their programming for 100 percent of the time; but that at a minimum stations must be required to broadcast the same amount of time for which simulcasting currently is required.

NCTA urged the Commission to keep the simulcast requirement intact, arguing that broadcasters’ digital channel “was never intended to be developed as a second, separate programming stream.”⁴³ NCTA points out that removing the simulcast requirement would

⁴¹ *Public Television Comments* at 27-28; *Hubbard Comments* at 5; *NBC and Telemundo Comments* at 10.

⁴² *Hubbard Comments* at 5.

⁴³ *NCTA Comments* at 21-25.

provide broadcasters with an additional program stream—and every incentive to maintain that separate service forever,” making it “increasingly difficult to reclaim the second channel.”⁴⁴

On the other hand, broadcasters unanimously urge repeal of the simulcast program requirements. They argue that the requirement stifles innovation and denies broadcasters the flexibility to broadcast digital programming that is different from their analog fare.⁴⁵ HDNet also urges the FCC to eliminate the rule because it provides a disincentive for broadcasters to provide HD content.⁴⁶ MSTV and NAB and individual broadcasters urge the FCC to retain the phased-in minimum hours-of-operation requirement that is currently part of the FCC’s simulcast schedule, but ask the FCC to extend the 75% operation deadline one year, until April 1, 2005, at least for small market broadcasters.⁴⁷

CEA’s members would prefer that all DTV stations transmit programming throughout the broadcast day. At a minimum, it is essential to the transition that stations broadcast digital programs for at least the stated minimum percentage of time required by the simulcast rule if the rule itself is repealed. The requirement should not be delayed or otherwise loosened. Viewers are not going to purchase digital receivers if stations are on the air for only a couple of hours a day, whether the viewer is in New York or Iowa. Therefore if the Commission repeals its simulcast rules, it must establish minimum transmission requirements for DTV stations that are identical to those currently provided by the simulcast requirements.

⁴⁴ *Id.* at 24-25.

⁴⁵ *MSTV and NAB Comments* at 14-17; *Public Television Comments* at 30-32; Comments of The Walt Disney Company and The ABC Television Network at 3-4 (filed April 21, 2003)(“*Disney and ABC Comments*”); *NBC and Telemundo Comments* at 8-10; *Belo Comments* at 11; *Sinclair Comments* at 14; *Capitol Comments* at 12; Comments of WHYY, Inc. at 2-3 (filed April 21, 2003; *Block Comments* at 9; *Hubbard Comments* at 6-7.

⁴⁶ Comments of HDNet LLC (filed April 21, 2003).

⁴⁷ *MSTV and NAB Comments* at 17-18; *Block Comments* at 9.

VI. Defining Terms in the Communications Act's DTV Provisions

In its comments, CEA argued that “television market” should be defined in terms of DMAs, just as for applying the Commission’s cable-carriage rules; under-power digital signals should count for purposes of determining whether network affiliates are broadcasting in digital (otherwise broadcasters would have an incentive—continued access to an extra channel—to NOT build out to maximum facilities); and that since broadcast signals must be on the cable primary tier under the cable carriage requirements, all cable customers should be counted as having access to the digital signal for purposes of the statutory 85 percent benchmark.

There was general agreement in the Comments to use DMAs for markets. However, some broadcasters, including MSTV and NAB, argue that customers should count as “subscribers” to an MVPD only to the extent they actually receive the digitally originated broadcast signals carried by an MVPD. MSTV and NAB also argue that a signal carried by an MVPD and down-converted should count toward the 85 percent market penetration goal only if it is down-converted at the television set and not the head-end because down-converting at the head-end fails to provide viewers with equipment capable of decoding DTV signals.⁴⁸ MSTV and NAB also request the Commission to defer its consideration of issues concerning extension requests until the next DTV biennial review.

Not counting the digital signals on cable even though all of the stations have a right of carriage on the primary tier available to all subscribers after the transition ends leads to a “catch 22.” If the Commission were to adopt the definitions proposed by MSTV and NAB, broadcasters could prevent ever reaching the 85 percent benchmark merely by negotiating agreements with cable for several of their digital signals to be carried on premium tiers. This

⁴⁸ *MSTV and NAB Comments* at 22-23.

certainly is not the intent of Congress. Nor can these issues be delayed until the next periodic review, which would push out their resolution to 2006 or later.

In addition, we believe that all digital broadcast signals carried on cable must count, notwithstanding whether they are down-converted at the head end or in the consumers' homes. While we prefer and have argued that broadcasters' full 6 MHz digital bandwidth should be retransmitted by cable systems (which only occupies 3 MHz when on the cable), allowing various types of cable carriage to count or not count for purposes of meeting the transition's deadlines would involve the Commission in classifying various types of cable carriage for purposes of the 85-percent goal, bog it down in innumerable disputes, and too easily allow individual parties to frustrate reaching the 85-percent goal. Given that after the transition all local DTV broadcast signals have a right of carriage on cable systems generally, any carriage that comports with the FCC's governing regulatory provisions should count for purposes of the 85 percent test.

VII. A Labeling Requirement is Unnecessary

As CEA explained, the industry has developed a wide range of voluntary labels that will fully inform consumers. Imposing a mandatory labeling regime would be arbitrary and capricious. There is no demonstrated problem, nor is one likely to arise.

Several commenters disagree.⁴⁹ MSTV and NAB assert that most consumers do not know the limitations of their receiver's functionality and therefore the FCC should require manufactures to incorporate "all of the expected functions into a receiving device" and deride the FCC's proposed labeling as a second-best approach. Sinclair urges the FCC to require detailed

⁴⁹ *MSTV and NAB Comments* at 35-36; *Sinclair Comments* at 23-23; *Capitol Comments* at 10; *Crown Castle Comments* at 10

labeling to include the type of antenna that would provide reception.⁵⁰ The CPB/WGBH National Center for Accessible Media requests that the FCC include clear information to inform consumers whether a DTV device includes an advanced (EIA-708B) closed caption decoder.⁵¹

Not only is labeling unnecessary, it would be counter-productive. The functions and options on television sets are evolving at a much faster pace than the Commission's regulations. It would be impossible, for example, for a label to tell a consumer what kind of antenna is needed for reception, since the consumer's home location is the determining factor. As we noted in our comments, CEA provides precisely this type of antenna information on a public website in an interactive format that allows tailored information that will be of real help to the consumer.⁵²

CEA also has adopted a national nomenclature for labels where needed to prevent consumer confusion.⁵³ It is noteworthy that the commenters fail to present one concrete instance where an additional label would prevent confusion. The marketplace demands clarity on relevant issues since consumers either will find that the equipment meets their requirements or they will return the unit. To suggest that consumers and salespeople cannot communicate what the consumer wants, and that a federally-dictated label will overcome this communications gap, just does not comport with how the retail marketplace operates.

VIII. The FCC Should Adopt the Entire PSIP Standard

Commenters that discussed ATSC A/53B and the PSIP Standard (A/65B, March 18, 2003) unanimously advocated that the FCC adopt the PSIP standard in its entirety and the amendment to A/53B to include the Active Format Description (AFD), as well as require

⁵⁰ *Sinclair Comments* at 23-23.

⁵¹ Comments of CPB/WGBH National Center for Accessible Media at 6 (filed April 21, 2003)(“*CPB/WGBH NCAM Comments*”).

⁵² See <http://www.antennaweb.org>.

broadcasters to include PSIP information in their digital signals.⁵⁴ The broadcasters recognize that adopting the PSIP standard will: 1) allow DTV stations to enhance their broadcast services by offering viewers more programming choices and control; 2) provide manufacturers the necessary marketplace certainty to incorporate innovative functions into DTV receivers; and 3) help ensure that DTV receivers work properly and perform uniformly with DTV signals. Therefore the Commission should adopt these standards.

The Advanced Television Systems Committee, Sharp Electronics, and CEA also agree that the FCC should incorporate EIA/CEA-766-A and EIA-708-B into subsection 15.120(d)(2) of the FCC's rules.⁵⁵ As CEA argued in its 2000 petition,⁵⁶ and reiterated in its comments,⁵⁷ incorporating these standards will preserve v-chip functionality during and after the DTV transition. Incorporating these standards would afford them treatment comparable to EIA-744 and EIA-608, the analog v-chip standards that the FCC adopted by reference in 1988.⁵⁸ The FCC can preserve consistent v-chip functionality in the digital environment by adopting EIA-

⁵³ See *CEA Comments* at 23.

⁵⁴ See, e.g., *MSTV and NAB Comments* at 26-32; *Public Television Comments* at 42-43; *Cox Comments* at 7; *Disney and ABC Comments* at 2, 5-6; *Capitol Comments* at 13; Comments of the Advanced Television Systems Committee, Inc. at 5-8 (filed April 21, 2003); *CPB/WGBH NCAM Comments* at 4-6; Comments of Harris Corporation at 8-10 (filed April 21, 2003); Comments of Thomson Inc. at 11-12 (filed April 21, 2003); Comments of Sharp Electronics Corporation at 6-16 (filed April 21, 2003).

⁵⁵ *ATSC Comments* at 8-9; *Sharp Comments* at 15-17.

⁵⁶ See *Expedited Petition for Rulemaking*, filed in ET Docket No. 97-206, RM 9832 (Jan. 12, 2000), cited in *NPRM* at ¶ 121.

⁵⁷ *CEA Comments* at 28-29.

⁵⁸ *CEA Comments* at 28 (citing Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings and Implementation of Sections 551(c), (d), and (e) of the Telecommunications Act of 1996, *Report and Order*, 15 FCC Rcd 11248 (1998)).

766-A and EIA-708-B, allowing manufacturers to phase in compliance over 24 months, and ensuring that cable operators recognize and pass through the signals.⁵⁹

IX. If Broadcast DTV Programming Is to Reach 70 Percent of American Homes, the FCC Must Approve the Proposed Cable Plug-and-Play Agreement Expeditiously

Approximately 70 percent of TV households view broadcast programming over a cable system, as CEA noted in its Comments, and the majority of consumers will continue to do so in the immediate future.⁶⁰ Consequently, mass consumer adoption of DTV will require simple, nationwide “plug and play” interoperability between DTV products and digital cable systems. Yet FCC-approved DTV plug-and-play cable-compatibility standards still do not exist, notwithstanding Congress’s clear mandate in 1992 that the FCC ensure compatibility between television sets and set-top boxes.⁶¹

The Commission currently has before it an industry agreement that sets out proposed cable/DTV plug-and-play standards to which the consumer electronics and cable industries have voluntarily agreed. The Commission’s expeditious review of this agreement would significantly accelerate the DTV rollout, as CEA, Belo, Capitol, and Thomson point out.⁶² Until that approval, TV manufacturers face unnecessary obstacles in designing and marketing the equipment necessary for most consumers to embrace DTV.

⁵⁹ See *CEA Comments* at 29.

⁶⁰ *CEA Comments* at 13-14.

⁶¹ See 47 U.S.C. § 544; *In re* Implementation of Section 17 of the Cable Television and Consumer Protection and Competition Act of 1992, *First Report and Order*, 9 FCC Rcd 1891, 2005 (1994).

⁶² *CEA Comments* at 13-14; *Belo Comments* at 6; *Capitol Comments* at 10; *Thomson Comments* at 9.

X. Conclusion

In considering the issues raised in this and other proceedings related to the DTV transition, speeding the transition to its conclusion must predominate in the decision-making process.

It is disheartening that many of the comments by broadcasters continue to advocate equivocation and delay, even while sales of digital equipment steadily increase and other interests, including cable, satellite and DVD manufacturers continue to expand their digital offerings and 16-by-9 aspect ratio programming to match that of the new digital equipment.

With access to valuable spectrum at issue, the Commission must reject calls for delay in its decision-making process. Instead, we urge the Commission to ensure that broadcasters completely fulfill their build-out and service obligations while facilitating the ability of America's 70 million cable households to receive DTV programming.

Respectfully Submitted,

CONSUMER ELECTRONICS ASSOCIATION



Michael Petricone, Esq.
Vice President, Technology Policy
CONSUMER ELECTRONICS ASSOCIATION
2500 Wilson Boulevard
Arlington, VA 22201
(703) 907-7544

David R. Siddall, Esq.
Neil Fried, Esq.
PAUL, HASTINGS, JANOFSKY & WALKER LLP
1299 Pennsylvania Avenue, N.W., 10th Fl.
Washington, DC 20004
(202) 508-9519

Counsel to the Consumer Electronics Association

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